

# DHEC Land Use Controls

What enforceable mechanisms  
does DHEC have to ensure  
Land Use Controls are  
maintained after transfer of  
Property?

# Current Laws and Regulations affecting cleanup decisions

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- **RCRA Sites-SCHWMRs** R.61-79.264 and 265;
- **Superfund Sites:** CERCLA, SARA, New Voluntary Cleanup Law;
- **Bureau of Water Sites:** Pollution Control Act;
- **UST Sites:** SC Underground Storage Tank Regulations R.61-98 Part 280 and the SUPERB Site Rehabilitation and Fund Access Regulations R.61-98.

## 2 Types of Remedies needing Land Use Controls

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- Sites where cleanup includes engineering controls (i.e., caps and pump and treat systems) that requires monitoring, maintenance, or operation and will not function as intended if disturbed.
- Sites where cleanup leaves residual contamination above unrestricted residential risk levels. These sites will only be protective if the land use is consistent with the assumptions of the remedy.

# Engineering Control Remedies

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- Requires ongoing maintenance to ensure the selected remedy meets cleanup standards.
- RCRA permits, CERCLA RODs, Administrative Orders, Corrective Action Plan Approval Letters are the enforcement mechanisms to ensure cleanup standards are met.
- If property is transferred, liability for maintaining engineered remedy remains with responsible party. Could this liability be transferred to nonresponsible party? What are DHEC Tools?

# Land Use Control Remedies

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- Requires ongoing maintenance to ensure the selected remedy meets cleanup standards;
- RCRA permits, CERCLA RODs, Administrative Orders, Corrective Action Plan Approval Letters are the enforcement mechanisms to ensure cleanup standards are met;
- If property is transferred, liability for maintaining Land Use controls remain with responsible party. Could this liability be transferred to a nonresponsible party? What are the DHEC tools?

# Current DHEC Land Transfer Tools

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- RCRA Sites: Hold responsible party liable for land use controls after transfer of property or require nonresponsible party to sign up to the RCRA permit.
- CERCLA Sites: Hold responsible party liable for land use controls after transfer of property. Use new Voluntary Cleanup law to require nonresponsible party to assume liability of land use controls with the use of a cleanup contract. Transfers land use control liability to new owner.
- Pollution Control Act Sites: Administrative orders to require maintenance of land use controls or the voluntary cleanup law.
- Underground storage tank sites: Conditional No Further Action requires facility to notify DHEC if land use changes occur on property to make remedy no longer protective. Maintains registry of sites where residual contamination has been left at levels inconsistent with unrestricted land use.

# Pitfalls with Current Land Use Tools

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- **RCRA Sites:** Process not conducive to land transfer. Facilities will not want liability for land use controls for property they have no control over. Private owners will not want property for which they have to sign up to a RCRA Hazardous Waste Permit. However, current process only way to ensure land use controls are enforceable through multiple land transfers. Could Voluntary Cleanup Law be used?? Only volunteering to maintain land use restrictions.

# Pitfalls with Current Land Use Tools

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- **CERCLA/Voluntary Cleanup Sites:**  
Transfer of Land Use Liability is accomplished as part of a cleanup contract to get cleanup to a restricted land use. If new owner (nonresponsible party) transfers property to new party, who has the liability for the land use controls, since agreement with DHEC is with original Owner?



# Pitfalls with Current Land Use Tools

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- **Pollution Control Act Sites/Voluntary Cleanup Sites:** If cleanup is being conducted under an administrative order, what mechanism will be used to ensure remedy or land use controls are maintained if property is to be transferred. Do we enter require new order or agreement with new owner? Should the Voluntary cleanup approach be used, and if so, then questions from previous slide are still relevant.

# Pitfalls with Current Land Use Tools

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- **Underground Storage Tank Sites:** Although R.61-98 requires notification by the responsible party of any changes to land use that would yield remedy no longer protective, does it track transfers of property and does it require new owner to follow same requirements of R.61-98. Also, does R.61-98 require deed restrictions or any notice be placed on deed that property is only protective for given land use?

# New Real Estate Laws

- Several States (i.e., Arizona, Colorado, Connecticut, Tennessee, Alabama) have recently passed legislation that changed their real estate laws to allow enforceable land use restrictions to run with the land and transfers land use control liability to the current owner. Most of these use the concept of a restrictive covenant or easement that restricts use of a specific parcel of a property to the use identified in the deed. It would run with property similar to how “right of ways” are maintained next to state roads and restrictive covenants are maintained around pipelines and electrical utilities. Existing owner is responsible for not violating the restrictive covenant or easement.

# Advantages to Real Estate Law Changes

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- Would ensure an enforceable mechanism exists to maintain land use restrictions through multiple property transactions.
- Would facilitate land transfers for redevelopment of contaminated property.
- Would transfer liability of land use restrictions to current property owner.

# Unanswered Questions with these Real Estate Law Changes

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- How will land use restrictions be tracked?
- Who would be responsible for enforcing the land use restrictions (DHEC? Local Government?)